

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Civil No. 08-cv-182-SM

Chevrolet 3500 Pick-up Truck,
White, VIN 1GCJK39194E210360,
Seized from Stephen Whitcomb,

NOTICE OF RULING

Re: (Document No. 11) Motion for Return of the White Truck
Pending the Resolution of the Matter Pursuant to
Federal Rule of Criminal Procedure 41(g)

Ruling: Denied, but without prejudice to filing a motion under the provisions of 18 U.S.C. Section 983(f)(1), after complying with the requirements of Section 983(f)(2). Based upon the premises advanced in the motion, it cannot be said that the claimant's motion is "frivolous," given that the truck is apparently necessary to claimant's gainful employment, a state judge thought it appropriate to return the property to claimant to facilitate his employment, it is not clear whether the government will meet its burden to prove a substantial connection between the truck and the crime, and, proportionality issues may arise as well. See 18 U.S.C. Section 983(c); see, e.g., United States v. One 1990 Ford Ranger Truck, VIN NO. 1FTCR10TALUC08885, 888 F. Supp. 1170 (N.D. Ga. 1995).

Entered by: Steven J. McAuliffe, Chief Judge

Date: September 18, 2008

cc: Seth R. Aframe, Esq.
Ron E. Hoffman, Esq.